

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 7, 2001 at 10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Pete Ekegren (R)
Sen. Jim Elliott (D)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lynette Brown, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 443, HJ 15, HB 90,
2/23/2001
Executive Action: HJ 15, HB 443

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HEARING ON HB 443

Sponsor: REP. GILDA CLANCY, HD 51, Helena

Proponents: Janice Doggett, Chief Legal Council of the Secretary of State

Don Coburn, representing himself
Belinda Fargher, National Notary Association and
Montana Notary Association
Russell T. Gowen, Montana Land Title Association
June Capps, Montana Notary Association

Opponents: None

Opening Statement by Sponsor:

REP. GILDA CLANCY, HD 51, Helena, EXHIBIT(sts52a01) explained the revision of notary laws in this bill.

Proponents' Testimony:

Janice Doggett, Chief Legal Council of the Secretary of State, said her office put this bill together at the request of the notaries to make necessary changes. She added that the fee stated in the bill would remain \$3.50.

Don Coburn, representing himself, strongly supported this bill. He stated that he had been involved in legislation concerning notaries in the past and felt the changes recommended in this bill were important.

Belinda Fargher, National Notary Association and Montana Notary Association, told the committee this bill would make terminology more concise. She added that the increase in fees and the mileage reimbursement would help to cover supplies and expenses.

Russell T. Gowen, Montana Land Title Association, stated this bill would clarify what notaries could and could not do.

June Capps, Montana Notary Association, supported this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. PETE Ekegren asked **Janice Doggett** what was meant by the reasons for charging fees. **Janice Doggett** responded that if the fee was not otherwise specified, then the charge remained at \$3.50. She added that the notaries could also charge a mileage fee which would be the same rate as state business.

Closing by Sponsor:

REP. GILDA CLANCY, HD 51, closed HB 443.

HEARING ON HJ 15

Sponsor: **REP. BOB LAWSON, HD 80, Whitefish**

Proponents: **Jane Karas, Flathead Valley Community College**

Opponents: **None**

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, told the committee this resolution urged a study of community college laws. **REP. LAWSON** stated the goals in this legislation were: (1) to develop an understanding of the origins of state laws affecting community colleges and how the original intent of the laws may no longer be relevant or consistent, (2) work with individuals who are knowledgeable about and experienced in the practical, legal, financial, educational, and related issues confronting community colleges, and (3) to develop a set of recommendations for Montana's community colleges that will guide these colleges into the 21st century and beyond. He added that community colleges fill a different need in a community than high schools and elementary schools.

Proponents' Testimony:

Jane Karas, Flathead Valley Community College, reiterated that community colleges fulfill different needs in a community than high schools and elementary school districts. She added that community colleges provide: (1) two-year, post-secondary training and occupational degrees, (2) customized training responsive to the needs of business and industry, and (3) opportunities to individuals placed in the community because of work or family, (4) re-training for dislocated workers, (5) entrance into partnerships with local communities, business, and industry as well as local elementary and high school districts. **Ms. Karas** said that under current law are both the elementary and high school district provisions as well as those in higher education. She said that independent audits of community colleges had identified issues of clarification needs because of the current language of the law. **Jane Karas** stated one of the issues identified was the notice of final budget meetings because

community colleges begin operations earlier than elementary and high schools do, so the dates would be different.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. BOB LAWSON, HD 80, closed HJ 15.

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HEARING ON HB 90

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: Fritz Zettel, City of Helena Fire Department
Bryan Kendrick, representing himself
Joe Burtell, Burtell Fire Protection
Pat Clinch, Montana State Fire Fighters

Opponents: Haley Beaudry, Board of Professional Engineers and
Land Surveyors
Robert Throssell, Montana Technical Council
Rodger Foster, Consulting Engineers
James Brown, C.W.G. Architects
Rose Hughes, Consulting Engineers Council

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, told the committee this bill would allow the Board of Supervisors, Professional Engineers and Land Surveyors to supervise and register the people who design our sprinkler systems. He added that this would maintain a registry and establish procedures for the design of fire extinguishing systems. REP. SHOCKLEY stated that currently, the law required the systems need to be designed by professional engineers. He explained EXHIBIT (sts52a02) two letters reporting to the Chairman of the Board of Professional Engineers and Land Surveyors. REP. SHOCKLEY said this bill would allow people who had been designing for more than five years to continue doing so. He said that professional engineers had a stamp and that when they stamp something, it is in effect certifying that they

produced the design themselves or that it was done under their direct supervision. **REP. SHOCKLEY** told the committee that if the engineer did design the system or worked directly with the project, they would be legitimate to stamp the system. However, he said that engineers were simply stamping "sprinkle as required" or words to the effect. He said he had found that engineers were not doing their job. **REP. SHOCKLEY** expressed concern that the engineers weren't actually designing the work themselves. He then wanted to design a bill that would cover the people who were doing the job.

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Proponents' Testimony:

Fritz Zettel, City of Helena Fire Department, said his department was the enforcement division. He told the committee that the technicians referred to in this bill were doing a very competent job.

Bryan Kendrick, representing himself, said he was certified at NICET level 3, which meant he was certified to do fire sprinkler shop drawings. He told the committee that when the contracts were put out for bids, they were concept in nature. **Mr. Kendrick** said that the technicians then design the systems that fit those concepts according to the standard of NFPA 13. That plan would then be sent to a fabricator to be installed.

Joe Burtell, Burtell Fire Protection, told the committee there were only nine sprinkler contractors in the state of Montana and none of those have professional engineers that work for them or on staff. **Mr. Burtell** stated that the engineers would leave this up to installing contractors to design the plans and those contractors would then go out and physically install in the buildings. He added that the only time a stamp was required was when it was a publicly funded building, such as schools. **Mr. Burtell** said most building and fire departments do not enforce that requirement. He added that there were only a few people who would qualify for the Grandfather Clause. **Joe Burtell** told the committee that the professional engineers were not doing what they were supposed to be doing. He said that professional engineers were offered a week-long course they could take to teach them how to design the fire sprinkler systems, so it was not something they learned in college, but were trained for afterwards.

Pat Clinch, Montana State Fire Fighters, said that sprinkler systems were an integral part of their fire fighting effectiveness and fire fighting tactics. He told the committee

that they want to know a system had been properly designed and installed to know that the system would operate correctly when they need to use it. **Mr. Clinch** said he had seen systems that were perhaps designed correctly, but had been installed wrong. He added that the results had been catastrophic when those systems were installed wrong. He said pipes could freeze when the systems were not installed properly. **Mr. Clinch** said there needed to be professionally designed sprinkler systems in the future to prevent that from happening.

Opponents' Testimony:

Haley Beaudry, Board of Professional Engineers and Land

Surveyors, EXHIBIT(sts52a03) explained the letter from Warren P. Scarrah, Chairman of the Board of Professional Engineers and Land Surveyors. He also explained NICET (National Institute for Certification in Engineering Technologies Technicians). **Mr. Beaudry** added that fire safety was the number one concern in buildings. He stressed that his board wanted to be in charge of the design of systems only - not the installation.

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Robert Throssell, Montana Technical council, expressed concern with the idea that this bill would create a board of paraprofessional. He urged the committee to not concur this bill.

Rodger Foster, Consulting Engineers, told the committee that professional engineers were charged with the responsibility of public protection and safety. He said this bill addressed more than just publicly funded buildings, but included any buildings having public access. **Rodger Foster** stated this bill would place the technicians under the Board of Professional Engineers and Land Surveyors. He added that the board was already doing their job. He said the role of the NICET technicians was important.

Mr. Foster defined the roles of an engineer as: (1) provide specific requirements, (2) establish the role of the professional engineer, (3) exercise directing, guiding and restraining power on matters of designs, plans and gives advice concerning engineering and accepts full responsibility for its contents, (4) personally makes engineering decisions to review and approve proposed decisions prior to implementation, (5) judges qualifications of technicians, and the validity and applicability of their recommendations, and (6) be responsive to criteria for design, methods of analysis, methods of manufacturing and construction, selection of materials and systems, economics, alternative solutions, and environmental considerations. He

added that this law did not address the issues of responsibility, accountability, or to standards of practice. **Mr. Foster** said there was a problem with persons who were not professional engineers designing the systems. He told the committee that when an engineer stamped a project, that meant he had acted according to his responsibilities. **Mr. Foster** explained that when a project said "sprinkle as required", it placed the responsibility on the contractor to provide sprinkling as defined in the plan of specifications which the engineer includes with every plan. He added that the problem was more a problem of enforcement and that they needed to somehow educate the public more concerning these issues. **Mr. Foster** explained to the committee that the process included: (1) the engineer specified parameters, (2) the plan was then given to the contractor, and (3) the plan returned to the engineers and they would have to approve the plan. He was concerned because this bill would change that process, he said. **Mr. Foster** said a permit should not be issued if there was not a seal on it. He finished by saying that he liked the present system.

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James Brown, C.W.G. Architects, addressed the "sprinkle as required" issue; he reiterated **Rodger Foster's** points concerning the issue. He added that the plans need to show that they had been designed by professional engineers and that the drawings should not be accepted unless they came stamped from professional engineers.

Rose Hughes, Consulting Engineers Council, EXHIBIT(sts52a04) explained to the committee that current law clearly established that the design of such systems was the practice of engineering and that there was a public health, safety and welfare interest in limiting the practice of engineering to licensed professional engineers.

Informational Testimony:

Tim Lloyd, Department of Commerce, told the committee his office was responsible for reviewing sprinkler system drawings in this jurisdiction. He added that there were 35 such jurisdictions in Montana.

Questions from Committee Members and Responses:

SEN. EVE FRANKLIN asked **REP. SHOCKLEY** about Section 1 and the design of fire suppression systems by non-licensed technicians.

REP. SHOCKLEY answered that under current law, NICET people were not supposed to design the systems. **EXHIBIT(sts52a05)**

SEN. FRANKLIN asked **REP. SHOCKLEY** if the engineers were not involved in the actual design of the systems. **REP. SHOCKLEY** responded that he wanted to place the practice under the control of the board.

SEN. FRANKLIN asked **Haley Beaudry** if he felt engineers were not always involved in the design of the systems. **Mr. Beaudry** responded that he had not seen that happen because if it did happen, the engineers would be under a breach of the requirements and responsibilities of the board and of the status as professional engineers. The Board of Professional Engineers would have an investigator assigned if that happened.

SEN. FRANKLIN asked **Bryan Kendrick** if he ever designed systems without the specifications from the engineers. He replied that they would occasionally do that. **Mr. Kendrick** added that they took the concepts from the engineers and made them work.

SEN. ED BUTCHER asked **Haley Broadery** what was the average fee charged for installing a sprinkler system. **Mr. Beaudry** replied that he could not answer that without knowing exactly what was needed in the plan.

SEN. BUTCHER asked **Haley Beaudry** how many engineers were certified with a specialty in sprinkler systems. **Mr. Beaudry** answered there were two in Montana, but that they consult with specialists out-of-state regularly also.

SEN. BUTCHER asked **Haley Beaudry** if anyone with an engineering degree could legally certify sprinkler systems. **Mr. Beaudry** answered no; in Montana, they only practiced the branch they were certified in.

SEN. KEN TOOLE told **Haley Beaudry** that he was concerned about responsibility. **SEN. TOOLE** asked **Mr. Beaudry** if the design went through the engineering firm and was approved, would the liability go back to the engineer. **Haley Beaudry** responded by saying, yes, it would. He added that anytime lawyers were involved, everyone involved would be included.

SEN. TOOLE asked **Haley Beaudry** if the engineer was assuming responsibility when he put his stamp on the plan. **Mr. Beaudry** said that was correct.

SEN. TOOLE asked **Haley Beaudry** if this bill would allow a non-certified person to design the plans. **Mr. Beaudry** replied that it would.

SEN. FRANKLIN asked **Bryan Kendrick** what background a NICET certified person had. **Mr. Kendrick** answered that the NICET person had an OJT and the experience was practice based.

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SEN. BUTCHER asked **Rodger Foster** what the cost would be for a fire sprinkler system. **Mr. Foster** replied that every building was different, ranging from a few thousand dollars up to tens of thousands of dollars.

SEN. BUTCHER asked **Rodger Foster** how many hours were spent on a design on average. **Mr. Foster** answered that the engineers could not take someone else's design and put their stamp on it because they would in violation of their license then. **Mr. Foster** added that he could not estimate how many hours the development of the plan would take unless he knew exactly what was needed. He stressed the importance of communicating with specialists in other states.

Closing by Sponsor:

REP. JIM SHOCKLEY, HD 61, told the committee that an engineer in Montana could do anything they said they could do. He stressed that if there was a lawsuit, anyone who was involved would be brought in. **REP. SHOCKLEY** said the present law was not adequate. He said that a public building in Montana, as cited in 18-2-122, were buildings such as public libraries, and gymnasiums. **REP. SHOCKLEY** said this bill would provide a list of qualified people and would give the board control. **REP. SHOCKLEY** closed HB 90.

EXECUTIVE ACTION ON HJ 15

Motion/Vote: **SEN. FRANKLIN** moved that **HJ 15 BE ADOPTED**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 443

Motion/Vote: SEN. HARGROVE moved that HB 443 BE CONCURRED IN.
Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:00 A.M.

SEN. DON HARGROVE, Chairman

LYNETTE BROWN, Secretary

DH/LB

EXHIBIT (sts52aad)